

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

DONALD BURTON

PETITIONER

v.

CAUSE NO. 3:09-CV-69-CWR-FKB

JIM HOOD; LAWRENCE KELLY

RESPONDENTS

ORDER

Before the Court is habeas petitioner Donald Burton's objection to the United States Magistrate Judge's Report and Recommendation. Docket No. 28. The Report and Recommendation recommends dismissing the habeas petition. Docket No. 27. Also pending is Burton's motion for a certificate of appealability. Docket No. 29.

After reviewing Burton's objection, the Report and Recommendation, and other relevant pleadings, the objection will be overruled and the Report and Recommendation will be adopted as this Court's own. The Court will add that Burton's claim to relief under the Innocence Protection Act is unavailing. *See* Docket No. 19, at 7. That law applies to persons convicted of federal offenses, not state inmates like Burton. 18 U.S.C. § 3600(a); *see Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 63 (2009) ("the Innocence Protection Act of 2004 . . . allows federal prisoners to move for court-ordered DNA testing under certain specified conditions.").

Burton's motion for a certificate of appealability will be denied. He has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Williams v. Thaler*, 602 F.3d 291, 300-01 (5th Cir. 2010).

A separate Final Judgment will issue this day.

SO ORDERED, this the 17th day of August, 2012.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE